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March 20, 2000

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**VIA HAND DELIVERY**

Magalie R. Salas, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

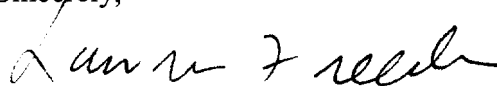
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MAR 20 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: In the Matter of Inquiry Concerning Deployment of Advanced  
Telecommunications Capability To All Americans in a Reasonable  
and Timely Fashion, and Possible Steps to Accelerate Such Deployment  
Pursuant to Section 706 of the Telecommunications Act of 1996;  
CC Docket No. 98-146**

Enclosed for filing with the Commission, please find an original and four (4) copies of NewPath Holdings, Inc.'s ("NewPath") Comments in response to the Commission's Notice of Inquiry released in the above-captioned proceeding on February 18, 2000. An additional copy of this filing has also been provided for date-stamp and return.

Please direct any questions concerning this filing to me at the address or phone number listed above. Thank you.

Sincerely,

  
Lawrence R. Freedman  
Counsel for NewPath Holdings, Inc.

Enclosures

cc: Commissioner William E. Kennard, Chairman  
Commissioner Susan Ness  
Commissioner Harold W. Furchtgott-Roth  
Commissioner Michael K. Powell  
Commissioner Gloria Tristani  
John W. Berresford, Senior Antitrust Attorney, Industry Analysis Division  
Mick Herke (via overnight mail)

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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In the Matter of )  
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Inquiry Concerning Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
And Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment Pursuant )  
To Section 706 of the Telecommunications )  
Act of 1996 )

CC Docket No. 98-146

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**COMMENTS**

NewPath Holdings Inc., ("NewPath") a new small and rural data-oriented Competitive Local Exchange Carrier ("CLEC")<sup>1</sup> headquartered in Des Moines, Iowa, by its attorneys, hereby submits Comments on the Federal Communications Commission's ("Commission" or "FCC") Notice of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

**I. Advanced Services for All Americans.**

As a recently formed service provider, NewPath is committed to an aggressive roll-out of high quality advanced service offerings that are competitively priced. NewPath's primary focus

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<sup>1</sup> NewPath has applied for CLEC certification in sixteen states, with one additional state application now in preparation. It has been granted certification in one state, and has not been denied or otherwise had certification revoked anywhere.

is to provide advanced telecommunications services in small and medium Midwestern markets, initially in seventeen states, through digital subscriber line (“DSL”) technology. Significantly, NewPath is also serving small to medium-sized business and residential consumers in America’s heartland, reaching a customer base not historically targeted by competitive entrants.

NewPath provides “Advanced Services”<sup>2</sup>, including DSL services. Its initial service offerings will include: Internet access, data services (private virtual circuits (“PVC”), web hosting and web software server), virtual private networks (LAN and WAN connections, PBX extensions) and video conferencing.

To the extent market, technological, and regulatory conditions warrant, NewPath contemplates supplementing its data services with voice services, possibly offered as a bundled package on a single loop. It also plans to provide a future offering of cable television and other ancillary and complimentary services.

It is also paramount for an emerging CLEC such as NewPath to rapidly build a customer base, providing the necessary foundation for future service offerings in addition to a good business model to generate additional financing and vendor support.

However, in the areas outside of NewPath’s control, it has experienced market entry barriers and delay in providing services. Such barriers and delays have prevented and could

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<sup>2</sup> “Advanced Services” is defined as high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications. See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order, CC Dkt. No. 98-147, FCC 99-355 (rel. Dec. 9, 1999).

continue to prevent advanced telecommunications services from deployment in a reasonable and timely manner.

**II. Advanced Telecommunications Services Should be Deployed in a Reasonable and Timely Manner.**

Time is critical in an industry that now operates on “Internet time.” Equipment financing accrues costs on a daily basis. Interest rates are traditionally higher for small businesses, compounding debt repayment when there are delays in building a customer base. The FCC has long recognized that small businesses face serious access to capital challenges.<sup>3</sup> Therefore, the FCC’s elimination of market entry barriers within its own authority that impose recurring unreasonable costs on small businesses, would not only be very beneficial to new entrants, but also falls within the FCC’s congressional mandate pursuant to Section 257.

In the early stage of executing NewPath’s overall business plan, delay and barriers to providing service in small and rural markets significantly increase the cost of that service. The cost of service in rural areas is already historically high for telecommunications services given geographical and topological limitations, requiring the need for continued universal service support. Especially for a small new entrant in this growing field of telecommunications, any additional increase in cost translates to higher prices to the customer and/or the new entrant absorbing such costs to its detriment. Neither scenario provides a good environment for the

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<sup>3</sup> See e.g., In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, Report, Gen Dkt. No. 96-113, FCC 97-164, 12 FCC Rcd 16802, para. 36 (rel. May 8, 1997) (“[B]y their nature, small telecommunications businesses tend to be start-up companies or companies in relatively early stages of growth and expansion requiring a significant amount of equity capital or a combination of debt and equity, yet those traditional sources of capital for small businesses are insufficient for today’s entry costs.”).

provision of affordable advanced services for residential, small and medium business consumers in rural territories.

NewPath is presently negotiating cutting edge interconnection contracts, including provisions for collocation, DSL services and line sharing, with all of the Bell Operating Companies, GTE, and a number of other small to mid-size incumbent local exchange carriers (“ILECs”). NewPath is also actively working with the ILECs in its target states to gain access to the ILEC’s technology required to rapidly deploy NewPath’s data services. Nonetheless, there are continuing difficulties in securing timely interconnection and collocation agreements.

Intercarrier relations, and specifically collocation arrangements, are a critical condition precedent to the deployment of DSL advanced services. Such arrangements need to be provided expeditiously. Currently, the process takes too long and can be very costly. For example, the time intervals imposed for the different stages of the collocation process can cumulatively serve as a costly delay for CLECs. Moreover, collocation costs for advanced services equipment can be huge, and sometimes seemingly arbitrary. Such problems should be scrutinized carefully by state and federal authorities.

### **III. The FCC Can Help to Accelerate Advanced Services Deployment.**

NewPath submits five recommendations that the FCC can readily implement that will promote accelerated deployment of advanced services. First, the FCC’s grant of NewPath’s “Petition for Expedited Declaratory Ruling” on the scope of unbundled access to the high-

frequency portion of loops is an excellent opportunity to eliminate one major market entry barrier for CLECs.<sup>4</sup>

The driving force behind the FCC's Line Sharing Order<sup>5</sup> was a substantial competitive advantage held by ILECs over competing providers of advanced telecommunications services. In short, ILECs had exclusive access to the data frequencies on loops carrying ILEC voiceband services. With this exclusive access, ILECs could, and indeed did, simply add data services to an end user's existing voice line at little or no marginal cost, while other data providers were forced to "compete" with less efficient and prohibitively expensive alternative pathways to the customer.

The Commission's express goal in the Line Sharing Order was to "level the competitive playing field" by giving competitive data providers the same opportunity as the ILECs to provide data services to customers on their existing voice lines.<sup>6</sup> To "level the field," the Line Sharing Order requires an ILEC to provide a requesting carrier with nondiscriminatory unbundled access to the data portion of loops, but only for those loops "on which the incumbent LEC is also providing analog voice service."<sup>7</sup> Ostensibly, the limitation on access only to loops where the ILEC is the voice provider was intended to reflect active voice loops that the ILEC controls, and

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<sup>4</sup> In the Matter of Petition For Expedited Declaratory Ruling of NewPath Holdings, Inc., CC Dkt. No. \_\_\_\_, (filed March 14, 2000).

<sup>5</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, CC Dkt. No. 98-147 and Fourth Report and Order, CC Dkt. No. 96-98, FCC 99-355 (rel. Dec. 9, 1999).

<sup>6</sup> Id. ¶ 35.

<sup>7</sup> Id. ¶ 72.

thus, has exclusive access to the data frequencies. This broadly stated limitation, however, can potentially be read not to address or, at the very least, not to definitively include a significant marketplace condition where the ILEC is not “providing analog voice service” directly to the end user, yet still retains exclusive access to the data frequencies on the loop: resale loops. The purpose of NewPath’s petition is to request that the Commission quickly and definitively state that the unbundling obligations in the Line Sharing Order apply to resale loops.

Second, NewPath requests that the FCC expedite its reconsideration of what constitutes “necessary equipment” for physical collocation pursuant to the U.S. Court of Appeals, D.C. Circuit’s recent remand of the FCC’s collocation Report and Order.<sup>8</sup> Any uncertainty in the rules during the negotiation process for collocation arrangements is a major disadvantage to new entrants, especially small businesses such as NewPath.

Third, NewPath also encourages the FCC to revisit on its own authority its decision to not adopt specific provisioning time intervals for collocation.<sup>9</sup> Universally, one of NewPath’s biggest obstacles is the collocation provisioning process and the designated deployment time intervals at each stage (i.e. application submission, feasibility/space review, quote development and build-out). Although the FCC concluded that “an incumbent LEC may not impose unreasonable restrictions on the time period within which it will consider applications for collocation space,”<sup>10</sup> there is still a need for standards across the many states for all collocation

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<sup>8</sup> GTE Service Corp. v. Federal Communications Commission, No. 99-1176 (D.C. Cir. Mar. 17, 2000).

<sup>9</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 98-147, FCC 99-48, para. 54 (rel. Mar. 31, 1999).

<sup>10</sup> Id. ¶ 53.

time interval requirements. The FCC recognized that only a few states have explicitly addressed this problem, although many have recognized that new entrants suffer competitive harm when collocation arrangements are unnecessarily delayed.<sup>11</sup> Therefore, federal standards can be beneficial because they effectively reduce transaction costs in negotiating collocation agreements and establish certainty in the negotiation process.

Fourth, NewPath proposes that the FCC include resolution of disputes between telecommunications carriers regarding deployment of advanced telecommunications services within its new “rocket-docket” alternative dispute process.<sup>12</sup> Changing technologies and marketing pressures dictate speed to market. This ability to capitalize on market conditions is critical for any new entrant. Therefore, sufficient remedies need to be in place to offer very fast, efficient, and economical dispute resolution and enforcement of rules. Such mechanisms are not always available at the state level.

The FCC itself has recognized that increased “enforcement,” as opposed to increased “regulation,” may be a more effective tool to facilitate vigorous and fair competition in an evolving competitive environment. Thus, the FCC’s new Enforcement Bureau can help resolve, in a more timely manner, some of the issues CLECs face with ILECs, or LECs with ISPs, etc., and do so in a way that gives notice to the entire industry what is acceptable competitive behavior and what is not.

Last, and certainly not least, NewPath recommends that the FCC ensure that there will be

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<sup>11</sup> Id. ¶ 54.

<sup>12</sup> In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, Second Report and Order, CC Dkt. No. 96-328, FCC 98-154 (rel. July 14, 1998).

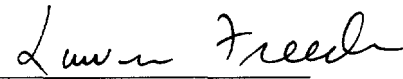


adequate universal service and other funding support mechanisms for new entrants providing advanced services to rural and high cost territories. NewPath submits that federal dollars targeted toward the deployment of Advanced Services in high cost rural areas would greatly assist and expedite the provision of such services.

In closing, NewPath is dedicated and committed to the advancement of emerging technology as a way for small and mid-size rural markets to be part of the advanced telecommunications revolution. It needs the FCC's assistance, however, in the elimination of regulatory and marketplace obstacles that are not directly within NewPath's control but serve to hamper the deployment of such services in a timely and reasonable manner.

Respectfully submitted,

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